



## ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OAR-2023-0292; FRL-11010-01-OAR]

### California State Motor Vehicle Pollution Control Standards; Advanced Clean Cars II Regulations; Request for Waiver of Preemption; Opportunity for Public Hearing and Public Comment

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of opportunity for public hearing and comment.

**SUMMARY:** The California Air Resources Board (CARB) has notified the Environmental Protection Agency (EPA) that it has adopted regulations applicable to new 2026 and subsequent model year (MY) California on-road light- and medium-duty vehicles, hereinafter the Advanced Clean Cars II (ACC II) regulations. The ACC II regulations include two sets of requirements, one for conventional vehicles powered by internal combustion engines and one for zero-emission vehicles (with plug-in hybrid electric vehicles subject to both sets). By letter dated May 22, 2023, CARB submitted a request that EPA grant a waiver of preemption under section 209(b) of the Clean Air Act (CAA) for the ACC II regulations. This notice announces that EPA has scheduled a public hearing concerning California's request and that EPA is accepting written comment on the request.

**DATES:** *Comments.* Comments must be received on or before the date of February 27, 2024.

*Public Hearing:* EPA will hold a virtual public hearing on January 10, 2024. If necessary, an additional session may be held virtually on January 11, 2024, to accommodate the number of testifiers that sign-up to testify. Please refer to the **SUPPLEMENTARY INFORMATION** section for additional information regarding the public hearing and registration. Additional information regarding the virtual public hearing and this action can be found at:

<https://www.epa.gov/regulations-emissions-vehicles-and-engines/virtual-public-hearing-californias-advanced-clean-car>.

**ADDRESSES:** *Comments.* You may submit your comments, identified by Docket ID No. EPA-HQ-OAR-2023-0292, by one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov> (our preferred method). Follow the online instructions for submitting comments.
- E-mail: [a-and-r-Docket@epa.gov](mailto:a-and-r-Docket@epa.gov). Include Docket ID No. EPA-HQ-OAR-2023-0292 in the subject line of the message.
- Mail: U.S. Environmental Protection Agency, EPA Docket Center, Air Docket, Mail Code 28221T, 1200 Pennsylvania Avenue, NW, Washington, DC 20460.
- Hand Delivery or Courier: EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue, NW, Washington, DC 20004. The Docket Center's hours of operation are 8:30 a.m. – 4:30 p.m., Monday – Friday (except Federal Holidays).

*Instructions:* All submissions received must include the Docket ID No. for this action.

Comments received may be posted without change to <https://www.regulations.gov>, including any personal information provided. For the full EPA public comment policy, information about confidential business information (CBI) or multimedia submissions, and general guidance on making effective comments, please visit <http://www.epa.gov/dockets/commenting-epa-dockets>.

*Public hearing.* The virtual public hearing will be held on January 10, 2024. If necessary, an additional session may be held on January 11, 2024, to accommodate the number of testifiers that sign-up to testify. The hearing will begin each day at 10:00 a.m. Eastern Time (ET) and end when all parties who wish to speak have had an opportunity to do so. All hearing attendees (including even those who do not intend to provide testimony) should register for the public hearing by January 4, 2024. Information on how to register can be found at <https://www.epa.gov/regulations-emissions-vehicles-and-engines/virtual-public-hearing-californias-advanced-clean-car>. Additional information regarding the hearing appears below under **SUPPLEMENTARY INFORMATION**.

**FOR FURTHER INFORMATION CONTACT:** David Dickinson, Office of Transportation

and Air Quality, (6405J), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave, NW, Washington, D.C. 20460, Email: Dickinson.David@epa.gov. Telephone: (202) 343-9256.

## **SUPPLEMENTARY INFORMATION:**

### **I. CARB's Waiver Request**

CARB's May 22, 2023, letter to the EPA Administrator notified EPA that CARB had finalized its ACC II regulations. The ACC II regulations, adopted by the Board on August 25, 2022 (approved by California's Office of Administrative Law (OAL) and becoming effective November 30, 2022) contain a series of requirements under California's low-emission vehicle (LEV) IV regulation and a series of requirements regarding its zero-emission vehicle (ZEV) program.<sup>1</sup> The LEV IV requirements include, for example, applying exhaust and evaporative emission fleet-average standards solely to vehicles powered by internal combustion engines and excluding ZEVs from the fleet calculation. The LEV IV requirements reduce the maximum allowed exhaust and evaporative emission rates from vehicles under the existing fleet-average standard and aim to reduce cold-start emissions by applying the emissions standards to a broader range of in-use driving conditions.<sup>2</sup> The ZEV requirements of ACC II include, for example, a requirement for vehicle manufacturers to sell increasing percentages of ZEVs beginning with the 2026 MY.<sup>3</sup> Manufacturers are able to meet up to 20 percent of their sales requirements through the use of plug-in hybrid vehicles (PHEVs) that meet specified requirements.

CARB requests that EPA grant a new waiver for the ACC II regulatory program. CARB's request and waiver analysis includes "a description of California's rulemaking actions, a review of the criteria governing EPA's evaluation of California's request for waiver action, [CARB's] analysis and rationale supporting [its] request, and supporting documents."<sup>4</sup> CARB's

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<sup>1</sup> The ACC II regulatory text can be found in Attachment 7 to CARB's May 22, 2023, ACC II waiver request (the ACC II Waiver Support Document) found at EPA-HQ-OAR-2023-0292). The specific regulatory provisions under EPA's waiver consideration can be found at footnote 36 to the ACC II Waiver Support Document.

<sup>2</sup> Cold starts occur when the vehicle engine is started after the vehicle has been shut-off for a period of time.

<sup>3</sup> The ZEV sales percentages for each vehicle manufacturer are based on their respective fleet sales in a given model year.

<sup>4</sup> Letter from Steven S. Cliff, CARB, dated May 22, 2023, EPA-HQ-OAR-2023-0292. The ACC II Waiver Support Document, attached to the letter from Mr. Cliff, are both available at EPA-HQ-OAR-2023-0292.

waiver analysis, set forth in its ACC II Waiver Support Document, addresses how the ACC II regulations and CARB's waiver request meet each of the three waiver criteria in section 209(b)(1) of the CAA.<sup>5</sup> For example, CARB explains how the ACC II regulations will not cause California motor vehicle emission standards, in the aggregate, to be less protective of public health and welfare than applicable federal standards and that no basis exists for the EPA Administrator to find that CARB's determination is arbitrary and capricious under section 209(b)(1)(A) of the CAA.<sup>6</sup> CARB also explains how it continues to demonstrate California's need for a separate motor vehicle emission program, including the ACC II regulations contained in its waiver request, under section 209(b)(1)(B) of the CAA.<sup>7</sup> Finally, CARB explains how the ACC II regulations in its waiver request meet the requirement in section 209(b)(1)(C), which requires California's regulations to be consistent with section 202(a) of the CAA.<sup>8</sup>

## **II. Scope of Preemption and Criteria for a Waiver under the Clean Air Act**

Section 209(a) of the CAA provides:

No State or any political subdivision thereof shall adopt or attempt to enforce any standard relating to the control of emissions from new motor vehicles or new motor vehicle engines subject to this part. No state shall require certification, inspection or any other approval relating to the control of emissions from any new motor vehicle or new motor vehicle engine as condition precedent to the initial retail sale, titling (if any), or registration of such motor vehicle, motor vehicle engine, or equipment.

Section 209(b) of the Act requires the Administrator, after notice and opportunity for public hearing, to waive application of the prohibitions of section 209(a) for any state that has adopted standards (other than crankcase emission standards) for the control of emissions from new motor vehicles or new motor vehicle engines prior to March 30, 1966, if the state determines that the state standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards. California is the only state that is qualified to seek

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<sup>5</sup> The ACC II Waiver Support Document provides a summary of the adopted regulations, a brief history of similar regulations, and an analysis of the adopted regulation under the waiver criteria in section 209(b)(1) of the CAA.

<sup>6</sup> ACC II Waiver Support Document at 28-35.

<sup>7</sup> *Id.* at 35-44.

<sup>8</sup> *Id.* at 44-57.

and receive a waiver under section 209(b).<sup>9</sup> Section 209(b)(1) requires the Administrator to grant a waiver unless he finds that (A) the determination of the state is arbitrary and capricious, (B) the state does not need the state standards to meet compelling and extraordinary conditions, or (C) the state standards and accompanying enforcement procedures are not consistent with section 202(a) of the Act. Previous decisions granting waivers of Federal preemption for motor vehicles have stated that State standards are inconsistent with section 202(a) if there is inadequate lead time to permit the development of the necessary technology giving appropriate consideration to the cost of compliance within that time period or if the Federal and State test procedures impose inconsistent certification procedures.<sup>10</sup>

### **III. Request for Comment**

When EPA receives new waiver requests from CARB, EPA traditionally publishes a notice of opportunity for public hearing and comment and then, after the comment period has closed, publishes a notice of its decision in the *Federal Register*. In this action, EPA invites comment on the following three criteria: whether (a) California's determination that its motor vehicle emission standards are, in the aggregate, at least as protective of public health and welfare as applicable Federal standards is arbitrary and capricious, (b) California needs such standards to meet compelling and extraordinary conditions, and (c) California's standards and accompanying enforcement procedures are consistent with section 202(a) of the CAA.

With regard to section 209(b)(1)(B), EPA must grant a waiver request unless the Agency finds that California "does not need such State standards to meet compelling and extraordinary conditions." EPA has interpreted the phrase "need[s] such State standards to meet compelling and extraordinary conditions" to mean that California needs a separate motor vehicle program as

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<sup>9</sup> "The language of the statute and its legislative history indicate that California's regulations, and California's determination that they comply with the statute, when presented to the Administrator are presumed to satisfy the waiver requirements and that the burden of proving otherwise is on whoever attacks them." *Motor and Equipment Mfrs. Ass'n v. EPA*, 627 F.2d 1095, 1121 (D.C. Cir. 1979).

<sup>10</sup> To be consistent, the California certification procedures need not be identical to the Federal certification procedures. California procedures would be inconsistent, however, if manufacturers would be unable to meet the State and the Federal requirements with the same test vehicle in the course of the same test. *See, e.g.*, 43 FR 32182 (July 25, 1978).

a whole in order to address environmental problems caused by conditions specific to California and/or effects unique to California (the “traditional” interpretation).<sup>11</sup> EPA intends to use this traditional interpretation in evaluating California’s need for the ACC II regulations under section 209(b)(1)(B).

With regard to section 209(b)(1)(C), EPA must grant a waiver request unless the Agency finds that California’s standards are not consistent with section 202(a). EPA has previously stated that consistency with section 202(a) requires that California’s standards must be technologically feasible within the lead time provided, giving due consideration to costs, and that California and applicable Federal test procedures be consistent.<sup>12</sup>

EPA also maintains a web page that contains general information on its review of California waiver and authorization requests. Included on that page are links to prior waiver and authorization *Federal Register* notices. The page can be accessed at <https://www.epa.gov/state-and-local-transportation/vehicle-emissions-california-waivers-and-authorizations>.

#### **IV. Procedures for Public Participation**

The virtual public hearing will be held on January 10, 2024. If necessary, an additional session may be held on January 11, 2024, to accommodate the number of testifiers that sign-up to testify. The hearing will begin at 10:00 a.m. Eastern Time (ET). All hearing attendees (including those who do not intend to provide testimony and merely listen) should register for the public hearing at: <https://www.epa.gov/regulations-emissions-vehicles-and-engines/virtual->

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<sup>11</sup> See, e.g., 81 FR 78149, 78153 (November 7, 2016); 81 FR 95982 95985–86 (December 29, 2016). EPA recently found and confirmed, in the Agency’s reconsideration of a previous withdrawal of a waiver of preemption for CARB’s Advanced Clean Car program, that the traditional interpretation of section 209(b)(1)(B) was appropriate and continues to be a better interpretation. 87 FR 14332, 14367 (March 14, 2022). CARB’s May 22, 2023, waiver request addresses both the traditional and an alternative interpretation wherein the need for the specific standards in the waiver request would be evaluated.

<sup>12</sup> See, e.g., 81 FR 78149, 78153–54 (“EPA has previously stated that the determination is limited to whether those opposed to the waiver have met their burden of establishing that California’s standards are technologically infeasible, or that California’s test procedures impose requirements inconsistent with the federal test procedure. Infeasibility would be shown here by demonstrating that there is inadequate lead time to permit the development of technology necessary to meet the 2013 HD OBD New or Stricter Requirements that are subject to the waiver request, giving appropriate consideration to the cost of compliance within that time.”) (citing 38 FR 30136 (November 1, 1973) and 40 FR 30311 (July 18, 1975)); 81 FR 95982, 95986 (December 29, 2016); 70 FR 50322 (August 26, 2005).

*public-hearing-californias-advanced-clean-car*. Those seeking to register should do so by January 4, 2024.

If you require the services of a translator or special accommodations such as American Sign Language, please pre-register for the hearing and describe your needs by January 4, 2024. EPA may not be able to arrange accommodations without advance notice.

Please note that any updates made to any aspect of the hearing will be posted online at: <https://www.epa.gov/regulations-emissions-vehicles-and-engines/virtual-public-hearing-californias-advanced-clean-car>. While EPA expects the hearing to go forward as set forth above, please monitor the website or contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to determine if there are any updates. EPA does not intend to publish a document in the *Federal Register* announcing updates.

Each commenter will have 3 minutes to provide oral testimony. EPA may ask clarifying questions during the oral presentations but will not respond to the presentations at that time. EPA recommends submitting the text of your oral comments as written comments to the docket for this action. Written statements and supporting information submitted during the comment period will be considered with the same weight as oral comments and supporting information presented at the public hearing.

The Agency will make a verbatim record of the proceedings at the hearing that will be placed in the docket. EPA will keep the record open until February 27, 2024. After expiration of the comment period, the Administrator will render a decision on CARB's request based on the record of the public hearing, relevant written submissions, and other information that he deems pertinent.

**Sarah Dunham**

*Director, Office of Transportation and Air Quality, Office of Air and Radiation.*